

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
CHAPTER 103

Statutory Authority: 1976 Code Sections 58-3-140, 58-3-60, and 58-41-20

Notice of Drafting:

The Public Service Commission of South Carolina proposes to create a new regulation which outlines the role of a qualified, independent third-party consultant or expert during a proceeding and the Commissioners' reliance on the content of the qualified, independent third-party consultant's or expert's report filed pursuant to S.C. Code Ann. Section 58-41-20(I). Interested persons may submit comments to the Public Service Commission, Clerk's Office, 101 Executive Center Drive, Suite 100, Columbia, South Carolina 29210. Please reference Docket Number 2019-362-A. To be considered, comments must be received no later than 4:45 p.m. on Thursday, February 13, 2020.

Synopsis:

S.C. Code Ann. Section 58-41-20(I) states, "(I) The commission is authorized to employ, through contract or otherwise, third-party consultants and experts in carrying out its duties under this section, including, but not limited to, evaluating avoided cost rates, methodologies, terms, calculations, and conditions under this section. The commission is exempt from complying with the State Procurement Code in the selection and hiring of a third-party consultant or expert authorized by this subsection. The commission shall engage, for each utility, a qualified independent third party to submit a report that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section. The qualified independent third party is subject to the same ex parte prohibitions contained in Chapter 3, Title 58 as all other parties. The qualified independent third party shall submit all requests for documents and information necessary to their analysis under the authority of the commission and the commission shall have full authority to compel response to the requests. The qualified independent third party's duty will be to the commission. Any conclusions based on the evidence in the record and included in the report are intended to be used by the commission along with all other evidence submitted during the proceeding to inform its ultimate decision setting the avoided costs for each electrical utility. The utilities may require confidentiality agreements with the independent third party that do not impede the third-party analysis. The utilities shall be responsive in providing all documents, information, and items necessary for the completion of the report. The independent third party shall also include in the report a statement assessing the level of cooperation received from the utility during the development of the report and whether there were any material information requests that were not adequately fulfilled by the electrical utility. Any party to this proceeding shall be able to review the report including the confidential portions of the report upon entering into an appropriate confidentiality agreement. The commission and the Office of Regulatory Staff may not hire the same third-party consultant or expert in the same proceeding or to address the same or similar issues in different proceedings."

The Public Service Commission of South Carolina recently held its first hearings related to the directives in S.C. Code Ann. Section 58-41-20, which is a part of the South Carolina Energy Freedom Act. This recently enacted law required the Commission to retain a qualified, independent third-party consultant or expert, and this qualified, independent third-party consultant or expert was required to file a report "that includes the third party's independently derived conclusions as to that third party's opinion of each utility's calculation of avoided costs for purposes of proceedings conducted pursuant to this section", in accordance with S.C. Code Ann. Section 58-41-20(I). The

Commission will utilize, as references, the South Carolina Federal Rules of Evidence, Article VII, Opinions and Expert Testimony, and the South Carolina Rules of Evidence, Article VII, Opinions and Expert Testimony, when drafting this proposed new regulation.

Legislative review of this proposal will be required.